UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE AND REHABILITATION, INC.
Employer[1]

and Case No. 29-RC-143565

LOCAL 2, FEDERATION OF NURSES AND HEALTH PROFESSIONALS, AMERICAN FEDERATION OF TEACHERS, UNITED FEDERATION OF TEACHERS, AFL-CIO
Petitioner[2]

DECISION AND DIRECTION OF ELECTION

The Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. ("the Employer" or "Lutheran Augustana") operates a nursing home and rehabilitation center, providing health care and rehabilitation services to residents of its facility in Brooklyn, New York. On December 29, 2014, Local 2, Federation of Nurses and Health Professionals, American Federation of Teachers, United Federation of Teachers, AFL-CIO ("the Petitioner"), filed a petition under Section 9(c) of the National Labor Relations Act ("the Act"), seeking to represent a bargaining unit of approximately 30 registered nurses ("RNs") employed by the Employer at its Brooklyn facility. The parties agree that approximately 19 full-time RNs and 5 part-time RNs belong in the petitioned-for unit. However, the Employer contends that approximately 6 "per diem" RNs must be excluded from the unit as casual employees who do not share a sufficient community of interest

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1 The Employer's name is hereby amended to reflect the Employer's full corporate name, as it appears in the New York State Division of Corporations' public database.

2 The Petitioner's name appears as amended at the hearing. (See Board Exhibit 2.)

with the other RNs, and should not be considered eligible to vote in any representation election directed by the Region.

A hearing on these issues was held before Sarah Hurley, a Hearing Officer of the National Labor Relations Board ("the Board"). In support of its position, the Employer called three witnesses to testify: director of human resources Jose Luis Labarca III; assistant director of nursing Lynda Olsen; and staffing coordinator Claudia Dudek. The Petitioner called per diem RN Jennifer Ambrozevicius to testify.

Pursuant to Section 3(b) of the Act, the Board has delegated authority in this proceeding to the undersigned Regional Director.

Based on the record as a whole, I conclude that per diem RNs employed by the Employer share a sufficient community of interest with other RNs to warrant their inclusion in the petitioned-for bargaining unit as regular part-time employees. Individual per diem RNs who meet a specific eligibility formula will be eligible to vote in the election, as directed below.

FACTS

The facts herein are generally undisputed. As noted above, the Employer operates a nursing home and rehabilitation center in Brooklyn, New York. The facility is a seven-floor building. Each of the upper six floors contains a different "unit." Since the facility operates 24 hours per day, it employs employees in three around-the-clock shifts, known as the day shift, evening shift and night shift. Thus, as indicated in the Employer's records (e.g., Er. Ex. 6),[3] the Employer assigns employees to cover three shifts on each of

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3 References to exhibits in the record are herein abbreviated as follows: "Bd. Ex #", "Er. Ex. #" and "Pet. Ex. #" refer respectively to Board, Employer and Petitioner exhibit numbers.

six units, for a total of 18 shifts per day. Most daytime shifts have 2-3 nurses (RNs or licensed practical nurses) and 5-6 certified nursing assistants (CNAs) each, whereas most overnight shifts are smaller, with 1-2 nurses and 2-3 CNAs each. Margaret Alade is the director of nursing (DON), and Lynda Olsen is the assistant DON.

Assignment of RN work in general

The Employer's staffing coordinator, Claudia Dudek, testified that she schedules the full-time and part-time RNs[4] to their shifts via a four-week "master schedule," which she prepares one or two weeks in advance. Dudek keeps copies of the master schedule in a binder, and they are also posted on bulletin boards in the staff lounge for each unit (floor) of the facility. Dudek generally schedules the full-time and part-time RNs for a pre-set number of shifts per week, in the same unit for each shift. Petitioner-witness Jennifer Ambrozevicius, who used to work for the Employer as a full-time RN, testified similarly that, when she worked full-time, she normally worked in the fourth-floor unit.[5] Excerpts from a master schedule (Er. Ex. 5., showing certain shifts on the 2nd, 3rd and 7th floors) similarly show that full-time RN Katherine Kalinowski was generally assigned to work on the second floor, five evenings per week during the four-week period.[6] A full-

4 In this factual summary, "part-time" refers to the RNs who work every week on a part-time basis, and whose names appear on the master schedule. There is no dispute that those RNs are appropriately included in the proposed unit and eligible to vote. By contrast, the phrase "per diem" refers to the RNs who do not appear on the master schedule, but who are assigned on a daily basis as needed, and whose status is in dispute. For the sake of consistency, this Decision uses the same terminology that the parties themselves used, although I ultimately conclude that per diem RNs *are* "regular part-time employees", as that term is defined in labor law.

5 Ambrozevicius testified that worked as a full-time RN at Lutheran Augustana for about 9 years. In early August 2014, she resigned for personal reasons. However, in late September 2014, she came back to work as a per diem RN, working about four days per week.

6 Employer witness Lynda Olsen explained the master schedule abbreviations as follows:
"D" for day shift; "E" for evening shift; "wr" for wound rounds;
"X" for regular day off; "H" for holiday; "S" for sick; "V" for vacation;
"BD" for birthday; "PD" for personal day.

time RN named Olga Rios was assigned to work five day shifts per week on the 7th floor. A part-time RN named Kim Clarke was assigned to the 7th floor, doing one day shift per week and three "wound round" shifts per week. Thus, the evidence confirms the Employer's characterization of full-time and part-time RNs' assignments as "regular" – in the sense of a consistent number of days per week, and a consistent location or unit. No per diem RNs' names appear on the master schedule.

Employer-witnesses Olsen and Dudek both testified that per diems RNs are assigned to fill in whenever the full-time or part-time RNs are absent (for example, out sick or on vacation) or when an increased patient "census" requires more staff. Six per diem RNs who are employed by the Employer were identified on the record: Jennifer Ambrozevicius, Olubunmi Adebayo-Famule, Joseph Cavarretta, Estenily Diestro, Myriam Durand and Sean O'Mallon.[7] When the Employer needs to assign per diems, Dudek (or Olsen or DON Alade) calls one of the 6 per diems to ask if he or she is available. If the per diem is available and accepts the assignment, then Dudek adds the per diem's name to a printed "daily schedule". If a per diem RN is not available to take the assignment, then the Employer simply calls another one on the list until an available per diem is found.

The daily schedules for the four days immediately preceding the hearing herein (Er. Ex. 6) show the following assignments of per diem RNs:

O. Adebayo, 3rd floor, 1/11/2015, night shift

J. Cavarretta, 3rd floor, 1/12/2015, evening shift

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7 A seventh per diem name, Yasman Yudeh, appeared on a list of current staff (Ex. Ex. 1), but there were no other references to Yudeh on the record. It is not clear whether she was still employed by the Employer at the time of the hearing.

J. Ambrozevicius, 2nd floor, 1/13/2015, day shift

J. Cavarretta, 3rd floor, 1/13/2015, evening shift

O. Adebayo, 2nd floor, 1/13/215, night shift.

In some instances, the per diem's name was typed into the form before it was printed out, and in other cases, names were changed by hand after the print-out.

Employer witnesses testified that, unlike the full-time and part-time RNs who usually work in the same unit, per diem RNs "float" to various units, wherever they are needed. For example, during the four days shown in Er. Ex. 6, Adebayo worked once on the 2nd floor, and once on the 3rd floor, whereas Cavarretta worked both evening shifts on the 3rd floor. Ambrozevicius testified that when she worked for the Employer full time, she normally worked on the 4th floor, whereas after she converted to a per diem RN, she has worked on both the 2nd and 4th floors.

To some extent, witnesses disputed how far in advance per diem RNs are assigned. Dudek initially testified that she puts per diems on the schedule sometimes 2 or 3 days in advance, and sometimes on the same day. By contrast, Ambrozevicius testified that, since she became a per diem in September 2014, she generally lets Dudek know what four days she is available 1 or 2 weeks in advance, and that Dudek generally gives her the days she has requested. A copy of a tentative per diem schedule (Pet. Ex. 1) shows the same combination of pre-printed information and hand-written notations as the daily schedules described above. Specifically, Pet. Ex. 1 shows Ambrozevicius assigned to four days per week (Tuesday through Friday) during the first two weeks of January 2015 in pre-printed letters ("D"), presumably entered into the form before it was printed

on or about January 10, 2015.[8] On the other hand, the two night-shift assignments for Adebayo (Jan. 11 and 13) and the two evening shifts for Cavarretta (Jan. 12 and 13) were entered by hand ("N" and "E" respectively), presumably *after* the form was printed out. Night shift assignments for Adebayo appear in pre-printed letters for January 16, 18 and 23. Pet. Ex. 1 also shows that per diem RN Sean O'Mallon was scheduled for two shifts one or two weeks in advance: a day shift on January 17, and a day shift on January 22. When the Employer recalled staffing coordinator Dudek as a witness, she explained the circumstances of some advance assignments (for example, Sean O'Mallon had arranged to cover for part-time RN Tsering Lama, who goes to school), but generally emphasized that she never knows for sure what the staffing needs will be for the next week. Thus, Dudek explained, the schedules are never "set in stone" but, rather, need to be updated on a daily basis.

There is no dispute that per diems are not penalized in any way for declining assignments, and the Employer has no minimum work requirement for staying on the Employer's payroll or the per diem list.

Other factors regarding per diem RNs

Ambrozevicius testified that her duties as a per diem RN are the same duties she performed when she was a full-time RN, such as doing her "rounds," overseeing all of the patients in the unit, handling their medications, and taking care of whatever medical

8 Ambrozevicius' four-days/week assignment indicated on Pet. Ex. 1 (Tuesday, Wednesday, Thursday, Friday) is consistent with her testimony that she has generally worked four days per week as a per diem since September 2014. However, for some reason, her name does not appear on both of the overlapping days contained in the "daily schedules" in Er. Ex. 6, i.e., the Tuesday and Wednesday of the same week. Specifically, her name appears on the daily schedule for Tuesday, Jan. 13, but not on the daily schedule for Wednesday, Jan. 14. It is not clear from the record whether she actually worked on Wednesday, Jan. 14.

tests they need. She continues to work with the same employees (including LPNs and CNAs) during her shifts. At the end of her shift, she reports on the status of patients to the incoming shift. Ambrozevicius further testified, and assistant DON Olsen also conceded, that per diem RNs work under the same supervisors as the other RNs, such as Olsen on the 4th floor and nurse-manager Ms. James on the 2nd floor.

The record contains somewhat contradictory evidence regarding whether the wage rates of per diem RNs differ from other those of other RNs. The Employer's director of human resources, Jose Luis Labarca III, testified from a document he created, intending to show that full-time and part-time RNs' base pay ($34/hour) may be augmented by certain "differentials" (based on years of experience, years of service, and education level), whereas per diem are entitled only to a flat rate ($34/hour) with no differentials. However, Ambrozevicius testified that she is paid the same rate now as a per diem RN (more than $37/hour, presumably due to some "differentials") as she received as a full-time RN.

There is no dispute that per diem RNs do not receive the same fringe benefits as other RNs employed by the Employer. Specifically, Olsen testified that full-time and part-time RNs are eligible for health insurance; a retirement plan; and paid time off for vacation, holidays, jury duty, sick leave and bereavement. Per diem RNs do not receive those benefits, except some paid sick leave required under New York City law. Olsen's testimony regarding benefits was not contradicted.

Two of the 6 RNs currently employed as per diems used to work for Lutheran Augustana as full-time RNs. As stated above, Ambrozevicius became a per diem RN after more than 9 years working there full-time. The record also indicates that per diem

RN Myriam Durand worked as a full-time RN for about one year (October 2013 – October 2014), and then became a per diem RN.

Finally, the record contains the following evidence (some of it hearsay) that per diem RNs employed by Lutheran Augustana are also employed elsewhere:

> Olsen testified that both Joseph Cavarretta and Sean O'Mallon work full-time for the New York City Fire Department. Dudek confirmed that they both work for the fire department, but Dudek was not sure whether Cavarretta works full-time there.
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> Olsen testified that when she asked per diem RN Estenily Diestro to work on occasion, Diestro said she could not because of another job. Dudek testified that Diestro works full-time at a school.
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> Dudek testified that Ambrozevicius also works at a home care facility, although neither party asked Ambrozevicius to testify about any other employment she may have.
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> In hearsay testimony, Olsen said that Dudek told her (Olsen) that per diem RN Myriam Durand told Dudek that she (Durand) could not work one time when Dudek called, because Durand said she had another job. However, Dudek herself did not testify regarding Durand's employment elsewhere.

Specific per diem RNs' hours of work

According to documents generated by human resources director Labarca, the six per diem RNs on the Employer's payroll have worked the following number of hours in the 3rd and 4th quarters of 2014. (This chart does not include hours that Ambrozevicius and Durand worked when they were still full-time nurses. Since Durand did not change to per diem status until the 4th quarter, on 10/6/2014, her 3rd quarter numbers are not applicable.)

last name	3rd Q 2014 # of hours	4th Q 2014 # of hours	3rd Q 2014 average/wk	4th Q 2014 average/wk	6 mos. average/wk
Adebayo-Famule	224	119	17.23	9.15	13.19
Ambrozevicius	70	301	5.38	23.15	14.27

Cavarretta		91	105		7.00		8.08		7.54
Diestro		35	84		2.69		6.46		4.58
Durand	N.A.	56		N.A.		4.31		4.31	
O'Mallon		84	42		6.46		3.23		4.85

Thus, in particular quarters, the per diems' average number of hours/week ranged from lows of 2.69 (Diestro, 3rd quarter) and 3.23 (O'Mallon, 4th quarter), to highs of 17.23 (Adebayo-Famule, 3rd quarter) and 23.15 (Ambrozevicius, 4th quarter). Their averages over two quarters, i.e., six months total, ranged from 4.31 (Durand) to 14.27 (Ambrozevicius).

DISCUSSION

In determining the appropriate unit placement of employees who work less than full-time, the Board distinguishes "regular" part-time employees from truly "casual" or irregular part-time employees. Whether they are labeled as "per diem," "on call," "extras" or "spares," the Board tries to determine whether those employees work regularly enough to share a community of interest with the other employees in the proposed bargaining unit. In some representation cases, the parties themselves may agree on a formula, e.g., a number of hours of work per week required for unit inclusion. In other cases where the parties do not agree, the Board traditionally uses the so-called Davison-Paxon formula as a sort of default. Davison-Paxon Co., a Division of R.H. Macy & Co., Inc., 185 NLRB 21 (1970). Specifically, the Board has found that employees who average at least four (4) hours of work per week, and who perform the same work under the same supervision as other employees, share a sufficient community

of interest with those employees for inclusion in the proposed bargaining unit with them. Id., 185 NLRB at 23-24.

The same standard was applied in Tri-State Transportation Co., Inc., 289 NLRB 356 (1988), a case involving spare delivery-truck drivers. The spare drivers performed the same work as full-time drivers, and shared the same supervision and wages. In terms of the "regularity" of their employment, the Board noted that spares had worked continually for the employer since their hire; that they remained employed as long as they chose; and that they had a reasonable expectation of continued employment. Id., 289 NLRB at 357. Thus, the concept of "regularity" does not require a spare to have a predictable or permanent schedule. Rather, it means that the spare works on a regular or ongoing basis. Furthermore, the Board in Tri-State found that the following other factors did *not* negate the spare drivers' community of interest with full-time drivers: the difference in fringe benefits; the spares' ability to reject work assignments; and their full-time employment elsewhere. Id. In sum, the Board found that spare drivers who met the traditional 4-hour standard worked with "sufficient regularity" to demonstrate a community of interest with other drivers to be included in the bargaining unit, and eligible to vote in the representation election.

Similar standards have been applied specifically to "on-call" registered nurses, akin to the per diem RNs involved in the instant case. In Newton-Wellesley Hospital, 219 NLRB 699 (1975), on-call RNs performed the same work as full-time and part-time RNs, in the same areas of the hospital and under the same supervision. The employer called them to work whenever extra help was needed. Although they did not work under a "prearranged" schedule, they worked on a "regular" basis throughout the relevant pay

periods. Id., 219 NLRB at 703. The Board included the on-call RNs as regular part-time employees in the proposed unit, despite some differences such as fringe benefits. Id. For the purpose of determining voting eligibility of individual RNs, the Board applied a standard that the parties themselves had agreed to in a prior representation case before a state labor commission – specifically, a total of at least 30 hours of work in the relevant 11-week period.[9] *See also* Sisters of Mercy Health Corp., 298 NLRB 483 (1990)(4-hour Davison-Paxon standard applied to on-call RNs); Northern California Visiting Nurses Assn., 299 NLRB 980 (1990)(same); and S.S. Joachim & Anne Residence, 314 NLRB 1191, 1193 (1994)(same).

It should be noted that, in the cases above, the Board distinguished between the issues of unit inclusion and voting eligibility. Although the two issues are closely related, they are distinct. In the first instance, the Board considers the work schedule of on-call employees *as a group*, to determine whether they work regularly enough to be included in the proposed bargaining unit. Subsequently, the Board uses the 4-hour formula to determine whether specific, individual employees are eligible to vote in the election, based on their particular schedules immediately before the election date. *See, e.g.,* Newton-Wellesley Hospital, 219 NLRB at 703. Thus, this Decision will address those two issues separately.

Unit inclusion

In the instant case, the record clearly indicates that per diem RNs employed by Lutheran Augustana share a community of interest with the other RNs in the petitioned-for bargaining unit. They perform the same nursing functions, overseeing the care of

[9] Notably, the formula that the parties had agreed to previously in Newton-Wellesley Hospital worked out to 2.73 hours per week, i.e., even less than the Board's traditional 4-hour standard.

residents and patients. Specifically, Ambrozevicius testified without contradiction that her duties as a per diem RN now are the same as they were when she worked as a full-time RN. Furthermore, per diem RNs work in the same areas as the full-time and part-time RNs, i.e., in the six "units" of the Employer's facility.[10] In addition, per diem RNs work under the same supervision as other RNs. Contrary to contentions in the Employer's brief, the question is not whether each per diem RN has the same supervisor from one shift to another. The relevant question is whether the per diem RNs have *the same supervisors as the other RNs* during their shifts. In that regard, both Ambrozevicius and Olsen testified that per diem RNs work under the same supervisors as other RNs, such as Olsen herself on the 4th floor and nurse-manager James on the 2nd floor. The record also indicates that per diem RNs work with the same employees (including CNAs and LPNs) during their shifts as the other RNs do, and that they have some contact with employees on other shifts when "giving report" during shift changes.

As for the regularity of their work, the record indicates that per diem RNs as a group have indeed worked for the Employer on a "regular," ongoing basis. The Employer maintains a list with the half-dozen per diems who are considered employees of Lutheran Augustana. If they decline work assignments that are offered to them, there is no penalty. The Employer does not require a minimum amount of work in a time period in order for per diems RNs to remain on the list indefinitely. Indeed, per diem RNs have apparently stayed on the list for months or even years, and clearly have an expectation of continued employment with Lutheran Augustana. Finally, the Employer's

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10 In its post-hearing brief, the Employer contends that the per diem RNs' work conditions are "materially different," in part, because they "float" to different floors on different days. (See Employer's

records show that most, if not all, of the six per diem RNs employed by Lutheran Augustana worked more than an average of more than 4 hours per week in the 3rd and 4th quarters of 2014. Applying the traditional Davison-Paxon formula, I conclude that the per diems' work history constitutes sufficiently "regular" employment to warrant their inclusion in the unit.

The Employer contends that the Region should use a standard that the Board used in Marquette General Hospital, Inc., 218 NLRB 713 (1975), specifically requiring 120 hours of work in either of the two quarters immediately before the eligibility date.[11] However, the Marquette case has rarely been followed by the Board in subsequent cases, and is not controlling here. Initially, I note that the Board's opinion in that case did not explain the basis for its selection of the 120-hour figure, and did not mention the traditional 4-hour standard at all. In later cases, such Sisters of Mercy Health Corp., *supra*, the Board seems to have limited the Marquette formula to cases with a large disparity in work hours among the on-call employees. In Marquette itself, the on-call employees ranged anywhere from 23 to 540.5 hours of work during the relevant quarters. 218 NLRB at 714. By contrast, in Sisters of Mercy, the Board found no such disparity in the two on-call RNs whose ballots had been challenged in the election (who had averaged 6.9 hours, and at least 5 hours of work). The Board in Sisters of Mercy expressly declined to use the Marquette formula and, instead, applied the Davison-Paxon formula, overruling the challenges to those two ballots. 298 NLRB at 483-4. Similarly, in S.S. Joachim & Anne Residence, 314 NLRB 1191 (1994), the Board declined to apply the Marquette formula to on-call RNs, *even though* their totals ranged from 84 to 794 hours.

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brief, pp. 6 and 12.) However, there is no dispute that per diem RNs work in the same areas as the other RNs.

Id., 314 NLRB at 1193. Instead, the Board applied the Davison-Paxon formula, calling it "the most widely used test" and appropriate for use "absent special circumstances." Id.

In the instant case, the per diem RNs' average number of work-hours per week in the two quarters before the hearing ranged from 4.31 to 14.27. Those numbers do not show such a large disparity among the RNs – or any other "special circumstances" -- to warrant using the Marquette formula. Instead, I find that the traditional 4-hour formula is appropriate for use in this case, and that it specifically supports the per diem RNs' inclusion in the petitioned-for unit. *See* Newton-Wellesley Hospital; Sisters of Mercy Health Corp.; Northern California Visiting Nurses Assn.; and S.S. Joachim & Anne Residence, all cited *supra*.

Moreover, the Board has held that the other factors cited by the Employer – the differences in fringe benefits, the per diems' ability to reject work without penalty, and their employment elsewhere – are insufficient to exclude the per diem RNs from the unit. Tri-State Transportation, *supra*, 289 NLRB at 357. Finally, I find that the record evidence regarding per diem RNs' wages is too inconclusive to warrant their exclusion from the unit.

In sum, based on all the foregoing, I conclude that the per diem RNs employed by Lutheran Augustana work regularly enough and share a sufficient community of interest to be included as "regular part-time" employees, in the same bargaining unit with the petitioned-for full-time and other part-time RNs. I will therefore include them in the appropriate unit, as directed below.

Eligibility to vote

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11 120 hours of work in a quarter (13 weeks) averages out to 9.23 hours per week.

Based on the Board cases cited *supra*, I hereby find that any individual per diem RN who has worked an average of at least four (4) hours per week during the 13-week period prior to the issuance of this Decision shall be eligible to vote as part-time employees.

As noted above on p. 9, some per diem RNs worked less 4 hours/week on average in particular quarters in late 2014, although the majority worked more than 4 hours/week on average. In creating the voter eligibility list as directed below, the Employer must calculate the average work-hours for the 13 weeks preceding the date of this Decision. Obviously, that time period will include weeks in January 2015 which were not reflected in the Employer's exhibits summarizing the 3rd and 4th quarters of 2014. Thus, depending on their specific work hours in January 2015, certain individuals may or may not appear on the voting eligibility list created by the Employer. If the Petitioner disputes the eligibility of any specific voter whose name does not appear on the list, that individual could vote subject to challenge. His or her eligibility may need to be determined via the Board's post-election challenged-ballot procedure.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Lutheran Augustana Center for Extended Care and Rehabilitation, Inc., a domestic corporation with its principal office and place of business located at 5434 Second Avenue, Brooklyn, New York, is engaged in operating a

nursing home and rehabilitation center. During the past year, which period represents its annual operations generally, the Employer derived gross revenues valued in excess of $250,000. In that same time period, the Employer also purchased and received goods valued in excess of $5,000 directly from points outside the State of New York.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated that Local 2, Federation of Nurses and Health Professionals, American Federation of Teachers, United Federation of Teachers, AFL-CIO , is a labor organization as defined in Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer.

4. A question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. As discussed *supra*, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

> All full-time and regular part-time[12] registered professional nurses employed by the Employer at its facility located at 5434 2nd Avenue, Brooklyn, New York; but excluding all other employees, the director of nursing, assistant director of nursing, nurse managers, assistant nurse managers, office clerical employees, guards and supervisors defined in Section 2(11) of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether

they wish to be represented for purposes of collective bargaining by Local 2, Federation of Nurses and Health Professionals, American Federation of Teachers, United Federation of Teachers, AFL-CIO. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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[12] Part-time or per diem employees will be considered eligible to vote if they averaged at least 4 hours of work per week during the 13-week period immediately before the date of this Decision.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **February 12, 2015.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlrb.gov,[13] by mail, or by

[13] To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

facsimile transmission at (718) 330-7579. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 a.m. of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 19, 2015.** The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov,[14] but may **not** be filed by facsimile.

Dated: February 5, 2015.

/S/

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

[14] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter, and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.